IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6357 OF 1995

WITH

CIVIL APPLICATION NO.3987 OF 1996

WITH

CIVIL APPLICATION NO.1852 OF 1999

WITH

CIVIL APPLICATION NO.1973 OF 1999

Ashok Umajirao Madane ..Petitioner.

Vs.

The Head Master,

Vadi High School, Vadi & Ors. ..Respondents.

....

Mr.N.V.Bandiwadekar for the Petitioner.

Mr.R.G.Ketkar with Mr.R.S.Khadapkar for Respondent Nos.1 and 2.

Mrs.S.S.Bhende for Respondent Nos.3 and 4.

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CORAM : F.I.REBELLO &

DR.D.Y.CHANDRACHUD, JJ.

13th September, 2005.

P.C. :

1. The Petitioner had preferred this Petition praying that the order dated 31st December, 1994 by which he was declared surplus and directing him to join Shri Ganesh Vidyalaya was illegal. The Petition was admitted and interim relief was granted in terms of prayer clause (c) which reads as under :

> "That pending the hearing and final disposal of this Petition, the Respondents, their officers, employees and servants or anybody claiming through them or on behalf of them be restrained by an order and injunction from in any way or manner prohibiting or stopping the Petitioner from resuming his duty and from working as an Assistant Teacher with Respondent No.1 school hereinafter."

2. During the pendency of the Petition, the Respondent Education Officer issued an order dated 13th August, 2001/ 20th August, 2001 whereby the order declaring the Petitioner as surplus was withdrawn. Once that is the case, really speaking nothing further would survive in the present

Petition.

3. There are, however, some intervening circumstances which have taken place and which are the subject matter of the Civil Applications. In so far as Civil Application 3987 of 1996 is concerned, that was an application to direct the Respondents to pay the Petitioner's salary and other benefits. There is no dispute that the Petitioner is paid till the end of July 2001. Really speaking, therefore, the said application has become infructuous and is dismissed as infructuous.

4. Civil Application 1852 of 1999 is an application by the management praying that Respondent No.3 in the application may be directed to attend the school and to give lectures.

5. The Petitioner herein has also taken out Civil Application 1973 of 1999 in which the prayer sought for by the present Petitioner is to direct Respondent No.1 management not to stop the Petitioner from signing the muster roll, to mark his attendance on duty and further to allow the

Petitioner to sign the same continuously.

6. From the above, it appears and considering the reply which has been filed and also the rejoinder, that the stand of the management is that the Petitioner has abandoned services and consequently, they have appointed one of the teachers to teach in the place of the Petitioner. The stand of the Petitioner is that he has not abandoned services, but the management has refused to allow him to join duties and/or sign the muster roll. Considering the controversy, we think it proper that ends of justice would be met, if the Education Officer i.e. Respondent No.3 is directed to hear the Petitioner as also the Respondent management, on the controversy as set out earlier. If Respondent No.3 comes to the conclusion, prima facie, that there is abandonment of service, then the Petitioner will have to seek such other remedy which he is entitled under the law. If Respondent No.3 comes to the conclusion that the Petitioner was prevented from joining duties, it would be open to him to pass such consequential orders directing the management to take back the Petitioner including payment of the Petitioner’s salaries. The entire exercise to

be completed within four months of a copy of this order being served on Respondent No.3. Considering that another teacher has already been appointed, the Education Officer also to give notice to the other teacher whose name will be given to Respondent No.3 by the management and hear him before passing the final order.

7. Needless to say that it would be open to the parties to produce all material including documentary evidence which they have before Respondent No.3 and Respondent No.3 to consider the same.

8. With the above directions, the Petition stands disposed of. There shall be no order as to costs.

Certified copy expedited.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)